



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77926; File No. SR-CBOE-2016-045]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule to Amend the Fees Schedule

May 26, 2016

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2016, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule<sup>3</sup>. Specifically, the Exchange proposes to allow Market-Makers to designate a Trading Permit Holder with agency operations ("Order Flow Provider" or "OFP") and Order Flow Providers to designate a Market-Maker for purposes of being able to take advantage of credits available under the Affiliate Volume Plan ("AVP").

By way of background, the Exchange currently has in place various incentive programs that benefit "affiliated" Trading Permit Holders ("TPHs"). Particularly, under AVP, if a TPH Affiliate of a Market-Maker (including a Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM")) qualifies under the Volume Incentive Program ("VIP"), that Market-Maker will also qualify for a discount on that Market-Maker's Liquidity Provider Sliding Scale ("Sliding Scale") transaction fees ("Liquidity Provider Sliding Scale Credit"). More specifically, if a Market-Maker's Affiliate reaches Tier 2, Tier 3 or Tier 4 of VIP, that Market-Maker will receive a Liquidity Provider Sliding Scale Credit of 10%, 20% or 30%, respectively. Additionally, if a Market-Maker's Affiliate receives a credit under VIP, that Market-Maker will also receive a credit on its Market-Maker Trading Permit fees<sup>4</sup> corresponding to the VIP tier

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<sup>3</sup> The Exchange initially filed the proposed fee change on May 2, 2016 (SR-CBOE-2016-044). On May 16, 2016, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> This credit does not apply to Market-Maker Trading Permits used for appointments in SPX, SPXpm, RUT, VIX, OEX and XEO.

reached (10% Market-Maker Trading Permit fee credit for reaching Tier 2 of the VIP, 20% Market-Maker Trading Permit fee credit for reaching Tier 3 of the VIP, and 30% Market-Maker Trading Permit fee credit for reaching Tier 4 of the VIP) (“Access Credit”). “Affiliate” for purposes of AVP (i.e., the Liquidity Provider Sliding Scale Credit and Access Credit) is currently defined as having at least 75% common ownership between the two entities as reflected on each entity’s Form BD, Schedule A.

The Exchange now proposes to expand the availability of the credits under AVP. Specifically, the Exchange proposes to allow any Market-Maker to designate an OFP as its “Appointed OFP” and any OFP to designate a Market-Maker to be its “Appointed Market-Maker” for purposes of qualifying for credits under AVP. TPHs would effectuate the designation by submitting a form to the Exchange.<sup>5</sup> The form would need to be submitted to the Exchange by 3:00 pm on the first business day of a month in order to be eligible to qualify for credits under AVP for that month. The Exchange would view transmittal of the completed form as acceptance of such an appointment and would only recognize one such designation for each party once every calendar month, which designation would remain [*sic*] automatically renew each month and remain in effect unless or until the Exchange receives an e-mail from either party indicating that the appointment has been terminated.

The Exchange notes that the proposal would be available to all Market-Makers and OFPs, even those who already have an “Affiliate” under the current definition. More specifically, the proposed change would enable a Market-Maker without an Affiliate OFP (i.e., an OFP with at least 75% common ownership between itself and that Market-Maker as reflected on each entity’s Form BD, Schedule A) – or with an Affiliate OFP – to enter into a relationship with an

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<sup>5</sup> The Appointed Affiliate Form may be submitted to [Registration@cboe.com](mailto:Registration@cboe.com).

Appointed OFP. Similarly, an OFP with or without an Affiliate Market-Maker would be able to enter into a relationship with an Appointed Market-Maker. The proposed change increases opportunities for TPHs to qualify for credits under AVP, as it would enable TPHs that are not currently eligible for AVP (i.e., doesn't have an "Affiliate") to avail themselves of AVP, as well as assist TPHs that are currently eligible for AVP (i.e., has an Affiliate) to potentially achieve a higher AVP tier, thus qualifying for higher credits. The Exchange notes that a Market-Maker that has both an Affiliate OFP and Appointed OFP may only qualify based upon the volume of its Appointed OFP. Similarly, the volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker may only count towards qualifying the Appointed Market-Maker, not Affiliate Market-Maker, for credits under AVP (by virtue of the volume reaching qualifying VIP tiers). The Exchange believes enabling additional Market-Makers and OFPs to take advantage of the AVP credits will attract more volume and liquidity to the Exchange, which will benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange lastly proposes to eliminate two references to the word "affiliated" in the Notes section of the AVP table. The Exchange believes that using the term "affiliated Market-Maker" in these locations may be confusing in light of the proposal to also allow "Appointed Market-Makers". Additionally, the Exchange believes preceding "Market-Maker" with "affiliated" is unnecessary and as such proposes to delete it in these two instances.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the

Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders.

The Exchange believes the proposed change is reasonable because it would be available to all Market-Makers and OFPs and the decision to be designated as an “Appointed OFP” or “Appointed Market-Maker” is completely voluntary and TPHs may elect to accept this appointment or not. Additionally, the proposed change increases opportunities for Market-Makers to qualify for credits under AVP, as it enables Market-Makers that are not currently eligible for AVP credits to avail themselves of AVP, as well as enables Market-Makers that are currently eligible for AVP to rely on volume that potentially achieves a higher VIP tier (and thus results in higher AVP credits). The Exchange also notes that other Exchanges have adopted a similar concept for their own affiliate-based incentive programs.<sup>9</sup>

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> See NYSE MKT LLC, Amex Options Fee Schedule, Section D, Prepayment Program

The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory because although only Market-Makers receive credits under AVP, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations that other market participants do not have. Additionally, the Exchange notes that incentivizing an Appointed OFP to achieve higher tiers under VIP can result in greater customer liquidity, and the resulting increased volume benefits all market participants. The Exchange also notes that the credits under AVP would be available to all Appointed Market-Makers whose Affiliate or Appointed OFP qualify. The Exchange believes enabling additional Market-Makers to take advantage of the AVP credits (not just those with “Affiliates” under the current definition) will attract more volume and liquidity to the Exchange, which will benefit all market participants.

The Exchange believes it is equitable and not unfairly discriminatory to permit only one designation of an Appointed Market-Maker and Appointed OFP per calendar month because it imposes a measure of exclusivity allowing both parties to rely upon each other’s volume executed on the Exchange and potentially increase such volume to the benefit of all Exchange participants for that month. The Exchange also believes that while it encourages parties to rely upon each other’s volume, limiting the exclusivity to one month also gives the parties the flexibility to make changes if the parties’ circumstances change (e.g., if one party terminates).

The Exchange lastly believes that eliminating the two references to the word “affiliated” in the Notes section of the AVP table reduces potential confusion, which removes impediments

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and Section E, Amex Customer Engagement (“ACE”) Program. See also Bats EDGX Exchange, Inc., Bats EDGX Options Exchange Fees Schedule, Definitions, “Appointed MM” and “Appointed OEF”.

to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed changes are pro-competitive as they would increase opportunities for additional TPHs to qualify for AVP, which may increase intermarket and intramarket competition by incenting Appointed OFPs and Appointed Market-Makers to bring increased volume (including customer liquidity in order to reach higher VIP tiers, which results in higher AVP credits), and the resulting increased volume benefits all market participants (including Market-Makers and OFPs that do not have Affiliates or Appointed Market-Makers or OFPs) through increased trading opportunities and enhanced price discovery. The Exchange also notes that limiting AVP credits to Market-Makers does not impose an unnecessary or inappropriate burden on intermarket competition because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers also have a number of obligations, including quoting obligations that other market participants do not have.

Additionally, the Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as stated above, the proposed changes are intended to promote competition and better improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange. Further, the proposed changes only affect trading on CBOE. To the extent that the

proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and paragraph (f) of Rule 19b-4<sup>11</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2016-045 on the subject line.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f).



Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2016-045, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Brent J. Fields,**  
*Secretary.*

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<sup>12</sup> 17 CFR 200.30-3(a)(12).

